



**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF INDUSTRIAL ACCIDENTS**

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Director, Workforce Development

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Commissioner

MEMORANDUM

TO: Massachusetts Approved UR Agents via Certified Mail

FROM: Catherine R. Farnam RN, MS, CS

DATE: March 10, 2003

RE: HIPPA Privacy Regulations, Medical Case Management/Managed Care, and Massachusetts's Workers' Compensation

Please be advised that in Massachusetts, the Department of Industrial Accidents, which oversees the Commonwealth's Utilization Review/Quality Assessment Program, does not construe such program to be a managed care/case management program either by statute or regulation. Insurers and UR Agents cannot conduct case management/managed care services under their approval by this Department as a UR agent in accordance with 452 CMR 6.0 et seq.

Because there is no mandated case management/managed care requirements in Massachusetts if an insurer/UR agent chooses to conduct such business, it is voluntary on the part of the employee, and requires informed consent. Further, under the HIPPA Privacy Regulations in regard to workers' compensation an insurer cannot access the private/personal health information of an injured worker for the purpose of unregulated and unmandated case management/managed care without a signed consent. To do so, violates the injured employee's rights to privacy under this ACT.

It has come to the Department's attention that insurers may be conducting unregulated and unmandated case management/managed care in Massachusetts without signed consent from the injured employee. This memo is to advise UR agents that when these cases come to the attention of the Department we will conduct a thorough investigation and report our findings to the Commissioner of Insurance. We will also notify the injured worker of their rights under the HIPPA Privacy Act.

HIPPA Privacy Regulations require that all health care organizations develop systems to prevent unauthorized use or disclosure of protected health information, which includes health care services other than utilization review, that are not regulated by 452 CMR 6.0. The Department reminds UR agents that we expect utilization review programs to ***remain separate and distinct from case management/managed care programs within your organizations, and to work to develop policies and procedures to prevent unauthorized use or disclosure of the protected health information of injured workers other than for the purpose of utilization review.*** The variety and complexity of health care networks that exist within some managed care/UR companies with differing systems and varying levels of automation and integration makes this a daunting task. However, HIPPA Privacy Regulations require organizations to "reasonably safeguard" Protected Health Information to prevent unauthorized use and agents should be working toward this goal.